

**TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
NOTICE OF PROPOSED REGULATORY ACTION**

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below after considering public comments, objections, or recommendations.

**I. PROPOSED REGULATORY ACTION**

In this filing, the Board proposes to amend section 599.515(e) in Title 2 of the California Code of Regulations. This proposed regulatory action pertains to contracting public agencies that elect to terminate participation under the Public Employees' Medical and Hospital Care Act (PEMHCA).

**II. WRITTEN COMMENT PERIOD**

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on February 9, 2004. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 326-3379; e-mail at the following address: [joe\\_parilo@calpers.ca.gov](mailto:joe_parilo@calpers.ca.gov); or mailed to the following address:

Joe Parilo, (Interim) Regulations Coordinator  
California Public Employees' Retirement System  
400 P Street, Room 1120  
P.O. Box 942702  
Sacramento, California 94229-2702

Telephone: (916) 326-3484

**III. PUBLIC HEARING**

Oral and written comments on the proposed actions will also be taken at a public hearing to be placed on the agenda of the regularly scheduled meeting of the CalPERS Health Benefits Committee:

February 18, 2004  
9:00 a.m.  
California Public Employees' Retirement System  
400 P Street  
Sacramento, California 95814

#### IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

#### V. AUTHORITY AND REFERENCE

Government Code section 22773 grants the CalPERS Board "all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it" under PEMHCA. In addition, Government Code section 22775 empowers the CalPERS Board to adopt all necessary rules and regulations to carry out the provisions of PEMHCA, "including but not limited to establishing the scope and content of a basic health benefits plan, regulations fixing reasonable minimum standards for health benefits plans, regulations fixing the time, manner, method and procedures for determining whether approval of any plan should be withdrawn, and regulations pertaining to any other matters it may be expressly authorized or required to provide for by rule or regulation by the provisions of this part." When adopting such rules and regulations, section 22775 directs the Board to "be guided by the needs and welfare of individual employees, particular classes of employees, and of the State, as well as prevailing practices in the field of prepaid medical and hospital care." The CalPERS Board is granted additional rulemaking authority with regard to specific sections of PEMHCA by Government Code sections 22775.5, 22777, 22810 and 22861.

This proposed action would implement, interpret and make specific Government Code section 22853.

#### VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under Government Code section 22853, a contracting agency participating in PEMHCA may terminate its participation by filing a resolution with the Board on or before a date established by the Board with termination effective at the end of the current contract term. Section 599.515(e) currently requires an agency to wait two years after termination before it may return to PEMHCA participation. The proposed amendment would extend this waiting period to five years, which may be reduced to no less than two years at the Board's discretion.

#### VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to the availability of health benefits to public agency employees.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action does not impose a mandate on local agencies or school districts.
- B. COST OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action does not impact costs or savings for any state agency.
- C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500 et seq.
- D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.
- E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.
- F. ADVERSE ECONOMIC IMPACT: CalPERS has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no significant effect on housing costs.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the above mentioned hearing or during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Nancy Pope, Manager of Member Health Services  
Health Benefit Services Division  
California Public Employees' Retirement System  
P.O. Box 942714  
Sacramento, California 94229-2714

Telephone: (916) 341-2403  
Fax: (916) 658-1313  
E-mail: [nancy\\_pope@calpers.ca.gov](mailto:nancy_pope@calpers.ca.gov)

Please direct requests concerning processing of this regulatory action to Joe Parilo, (Interim) Regulations Coordinator, at the address shown above, or Marilyn Clark, backup Regulations Coordinator, at (916) 326-3007.

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Joe Parilo, Acting Regulations Coordinator, at the address shown in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' web site at [www.calpers.ca.gov](http://www.calpers.ca.gov) under Members, About CalPERS, Proposed Regulatory Actions.

## XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed amendment to the regulation after the public comment period has closed. It may amend section 599.515(e) as modified if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.

**PROPOSED REGULATORY ACTION BY CALPERS**  
**Title 2, California Code of Regulations**

**Amendment to section 599.515(e)**

**§ 599.515. Contracting Agency Participation.**

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(e) Termination. A contracting agency may terminate its participation under the Public Employees' Medical and Hospital Care Act by filing with the Board a resolution passed by a majority vote of its governing body. The resolution electing to terminate must be filed with the Health Benefits Division of the Public Employees' Retirement System no later than 60 days after the Board of Administration approves and announces the health plan premium rates for the following year. The termination becomes effective at the end of the current contract year. The election to terminate is irrevocable after the filing of the resolution, and a resolution electing to be subject to the Public Employees' Medical and Hospital Care Act may not be filed thereafter within ~~two~~ five years of the termination date, except at the sole discretion of the Board and in no event within a period of less than two years.

NOTE: Authority cited: Sections 20120, 22773, 22775, 22777, and 22810, Government Code.  
Reference: Sections 20531, 20531.5 and 22850–22856, Government Code.

## **INITIAL STATEMENT OF REASONS**

### **Amendment to section 599.515(e) – Health Benefits**

Description of Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address: Pursuant to its authority under the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code section 22751, *et seq.*, the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) administers health benefits for over one million enrollees who are employees, annuitants and survivors of the state and of those school and public agency employers that have elected to participate in PEMHCA. The Board arranges for health benefits by contracting with health care plans and through its self-funded health benefit plans. Each health plan constitutes a separate risk pool consisting of enrollees from throughout the state. Each health benefits plan charges a statewide rate based on the characteristics of the risk pool without geographical or other variation.

Public agency and school employers are known as "contracting agencies" in law and are not mandated to have PEMHCA coverage for their employees and retirees. PEMHCA requires that CalPERS accept any contracting agency that elects to participate in PEMHCA, no matter how bad its geographic and/or demographic risk.

Recently the Board amended its regulations to create more flexibility with respect to the deadline by which contracting agencies must notify the Board of their intention to terminate PEMHCA participation. Contracting agencies now have 60 days between the time of the Board's approval and announcement of new contract year rates and the deadline for filing a resolution to terminate participation effective at the end of the year. Because the current regulations allow contracting agencies to re-enter the PEMHCA after only two years, it creates a "revolving door." Contracting agencies may withdraw from PEMHCA if they can find lower premiums, even if they know that the lower premiums cannot be sustained in the long-run, because they know that if their premiums go up they will be able to re-enter PEMHCA after only two years. The Board is concerned about the negative impact of repeated withdrawals and re-entries within a short period of time and the effect that has on the stability of the risk pool and health plan premiums for those remaining in PEMHCA as well as the viability of the PEMHCA program in general.

The Board believes that contracting agencies should weigh the long-term risks and benefits of remaining in or leaving PEMHCA before deciding to terminate. Under the current regulations, contracting agencies may leave precipitously because they know that they can quickly return to PEMHCA, which is essentially the insurer of last resort for all contracting agencies in the state. The Board is proposing a change in the waiting period in an effort to minimize potential threat to the financial stability of PEMHCA, and the State and the 1,200 public agencies in the program, if a high number of contracting

agency employers withdraw temporarily to take advantage of lower local premiums. A waiting period of up to five years to re-enter PEMHCA would cause contracting agencies to weigh the long-term benefits of remaining in PEMHCA against the long-term risks of leaving when they are offered a low initial premium rate. They will know that they will not be able to return to PEMHCA as soon as that initial low rate increases.

This amendment would allow the Board to exercise discretion with respect to when a contracting agency may re-enter PEMHCA. It establishes a maximum waiting period of five years, but allows the Board to reduce that period at its discretion. The minimum waiting period would still be two years.

Without this amendment, there will be instability in the risk pool and there will be significant premium increases for the PEMHCA health benefit plans, which in turn will result in increased costs to the state and the remaining contracting agencies and their employees and retirees.

Specific Purpose: The purpose of this amendment is to protect the financial stability of the health benefit plans approved, or contracted for, by the Board.

Necessity: This amendment is necessary to prevent the negative impact that repeated withdrawals and re-entries will have on the stability of the risk pools and health plan premiums for the State and those contracting agencies that continue to be subject to PEMHCA, as well as the viability of the PEMHCA program in general.

Technical, Theoretical and/or Empirical Studies, Reports or Documents: Not applicable.

Alternatives to the Regulatory Action and CalPERS' Reasons for Rejecting Those Alternatives: CalPERS has considered alternatives to this proposal, and has determined that there is no more effective way to carry out its purpose that would be less burdensome.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses: The proposed action has no cost impact on small businesses because it applies only to public agency employee health benefits.